



6560-50-P

## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 52**

**[EPA-R10-OAR-2018-0679; FRL-9990-50-Region 10]**

#### **Air Plan Approval; OR: Infrastructure Requirements for the 2015 Ozone Standard**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** Whenever a new or revised National Ambient Air Quality Standard (NAAQS) is promulgated, the Clean Air Act requires each State to submit a plan for the implementation, maintenance, and enforcement of the standard, commonly referred to as infrastructure requirements. The Environmental Protection Agency (EPA) is proposing to approve the Oregon Department of Environmental Quality's (ODEQ) State Implementation Plan (SIP), submitted on September 21, 2018, as meeting infrastructure requirements for the 2015 ozone NAAQS. In addition, the EPA is proposing to approve an Oregon Administrative Rule, submitted as part of the Cleaner Air Oregon program and rule revision on December 11, 2018, which incorporates the Code of Federal Regulation November 2018 edition as the version referred to throughout their rule.

**DATES:** Comments must be received on or before **[insert date 30 days after date of publication in the Federal Register]**.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R10-OAR-2018-0679, at <https://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from regulations.gov. The EPA may publish

any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION, CONTACT:** Christi Duboiski at (360) 753-9081, or [duboiski.christi@epa.gov](mailto:duboiski.christi@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document wherever “we,” “us,” or “our” is used, it is intended to refer to the EPA.

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### **I. Background**

On October 26, 2015 (80 FR 65292) the EPA published a rule revising the 8-hour ozone NAAQS from 0.075 parts per million (ppm) to a new, more protective level of 0.070 ppm.

Whenever EPA promulgates a new or revised NAAQS, CAA section 110(a)(1) requires states to make SIP submissions to provide for the implementation, maintenance, and enforcement of the

NAAQS. This particular type of SIP submission is commonly referred to as an “infrastructure SIP.”

These submissions must meet the various requirements of CAA section 110(a)(2), as applicable. Due to ambiguity in some of the language of CAA section 110(a)(2), EPA believes that it is appropriate to interpret these provisions in the specific context of acting on infrastructure SIP submissions. EPA has previously provided comprehensive guidance on the application of these provisions through a guidance document for infrastructure SIP submissions and through regional actions on infrastructure submissions.<sup>1</sup> Unless otherwise noted below, we are following that existing approach in acting on this submission. In addition, in the context of acting on such infrastructure submissions, EPA evaluates the submitting state’s SIP for facial compliance with statutory and regulatory requirements, not for the state’s implementation of its SIP.<sup>2</sup> The EPA has other authority to address any issues concerning a state’s implementation of the rules, regulations, consent orders, etc. that comprise its SIP.

On September 21, 2018, the Oregon Department of Environmental Quality (ODEQ) submitted a SIP revision to meet the 2015 ozone NAAQS infrastructure requirements.<sup>3</sup> The EPA is proposing to approve ODEQ’s submission as meeting certain 2015 ozone NAAQS infrastructure requirements.

## **II. EPA Evaluation**

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<sup>1</sup> EPA explains and elaborates on these ambiguities and its approach to address them in its September 13, 2013 Infrastructure SIP Guidance (available at [https://www3.epa.gov/airquality/urbanair/sipstatus/docs/Guidance\\_on\\_Infrastructure\\_SIP\\_Elements\\_Multipollutant\\_FINAL\\_Sept\\_2013.pdf](https://www3.epa.gov/airquality/urbanair/sipstatus/docs/Guidance_on_Infrastructure_SIP_Elements_Multipollutant_FINAL_Sept_2013.pdf)), as well as in numerous agency actions, including EPA’s prior action on the Oregon Department of Environmental Quality’s infrastructure SIP to address the lead NAAQS (79 FR 21679, April 17, 2014).

<sup>2</sup> See U.S. Court of Appeals for the Ninth Circuit decision in *Montana Environmental Information Center v. EPA*, No. 16-71933 (Aug. 30, 2018).

<sup>3</sup> The September 25, 2018, submission also addressed all interstate transport requirements at CAA section 110(a)(2)(D) for the 2015 ozone NAAQS. However, this publication proposes action on only a portion of those requirements, specifically CAA sections 110(a)(2)(D)(i)(II) and 110(a)(2)(D)(ii). We intend to address the remainder of the interstate transport requirements in a separate, future action. *See* section 110(a)(2)(D) below.

110(a)(2)(A): Emission limits and other control measures

CAA section 110(a)(2)(A) requires SIPs to include enforceable emission limits and other control measures, means or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of the CAA.

State submission: Oregon's submission cites multiple Oregon air quality laws and SIP-approved regulations to address this element for the 2015 ozone NAAQS. Oregon Revised Statutes (ORS) 468A.035 *General Comprehensive Plan* provides authority to the ODEQ to develop a general comprehensive plan for the control or abatement of air pollution. ORS 468.020 *Rules and Standards* gives the Oregon Environmental Quality Commission (EQC) authority to adopt rules and standards to perform functions vested by law. ORS 468A.025 *Air Purity Standards* provides the EQC with authority to set air quality standards, emission standards, and emission treatment and control provisions. ORS 468A.040 *Permits; Rules* provides that the EQC may require permits for specific sources, type of air contaminant or specific areas of the State. The Oregon submission also cites these other SIP-approved laws and regulations:

- ORS 468 Environmental Quality Generally; Public Health and Safety; General Administration
- ORS 468A Air Quality, Public Health and Safety, Air Pollution Control
- ORS 468A.010 Policy
- ORS 468A.015 Purpose of air pollution laws
- ORS 468A.045 Activities Prohibited without Permit; Limit on Activities with Permit
- ORS 468A.050 Classification of Air Contamination Sources; Registration and Reporting; Registration and Reporting of Sources; Rules; Fees

- ORS 468A.055 Notice Prior to Construction of New Sources; Order Authorizing or Prohibiting Construction; Effect of No Order; Appeal
- ORS 468A.070 Measurement and Testing of Contamination Sources; Rules
- ORS 468A.310 Federal Operating Permit Program Approval; Rules; Content of Plan
- ORS 468A.315 Emission Fees for Major Sources; Base Fees; Basis of Fees; Rules
- ORS 468A.350-455 Motor Vehicle Pollution Control
- ORS 468A.625-.645 Chlorofluorocarbons and Halon Control
- ORS 468A.650-.660 Aerosol Spray Control
- ORS 468A.990 Penalties
- OAR 340-200-0020 General Air Pollution Procedures and Definitions
- OAR 340-202 Ambient Air Quality Standards and PSD Increments
- OAR 340-204 Designation of Air Quality Areas
- OAR 340-216 Air Contaminant Discharge Permits
- OAR 340-222 Stationary Source Plant Site Emission Limits
- OAR 340-223 Regional Haze Rules
- OAR 340-224 New Source Review
- OAR 340-226 General Emission Standards
- OAR 340-232 Emission Standards for VOC Point Sources
- OAR 340-236 Emission Standards for Specific Industries: Emission Limits
- OAR 340-242 Rules Applicable to the Portland Area
- OAR 340-250 General Conformity
- OAR 340-252 Transportation Conformity

- OAR 340-256 Motor Vehicles
- OAR 340-258 Motor Vehicle Fuel Specifications
- OAR 340-268 Emission Reduction Credits

EPA analysis: The State regulations identified above were previously approved by the EPA into the Oregon SIP and demonstrate that the Oregon SIP includes enforceable emission limits and other control measures to implement the 2015 ozone NAAQS. We recently approved updates to the Oregon ambient air quality standards in Division 202 to account for the 2015 ozone NAAQS (83 FR 24034, May 24, 2018). Oregon has no areas designated nonattainment for the 2015 ozone NAAQS. We note, however, that the EPA does not consider SIP requirements triggered by the nonattainment area mandates in part D, title I of the CAA to be governed by the submission deadline of CAA section 110(a)(1). Regulations and other control measures for purposes of attainment planning under part D, title I of the CAA are due on a different schedule than infrastructure SIPs.

Oregon regulates emissions of ozone precursors through its SIP-approved new source review (NSR) permitting program, in addition to provisions described below. Oregon's SIP-approved NSR program, in Division 224 *New Source Review*, is administered through Division 216 *Air Contaminant Discharge Permits*. The EPA most recently approved revisions to Oregon's NSR program as meeting Federal requirements on October 10, 2017 (82 FR 47122). The program regulates new and modified stationary sources of nitrogen oxides (NO<sub>x</sub>) and Volatile Organic Compounds (VOC) as precursors to ozone.

In addition to permitting provisions, Oregon's SIP contains numerous rules that limit emissions of NO<sub>x</sub> and VOC as precursors to ozone formation. These rules (listed above) include requirements to reduce pollutants that reduce visibility and contribute to regional haze, emission

standards for VOC point sources, emission limits for hot mix asphalt plants and other industries, industrial emission management rules that apply to the Portland area, and requirements that regulate motor vehicle fuel content specifications and certification of vehicle pollution control systems. As a result, we are proposing to approve the Oregon SIP as meeting the requirements of CAA section 110(a)(2)(A) for the 2015 ozone NAAQS.

110(a)(2)(B): Ambient air quality monitoring/data system

CAA section 110(a)(2)(B) requires SIPs to include provisions to provide for establishment and operation of ambient air quality monitors, collecting and analyzing ambient air quality data, and making these data available to the EPA upon request.

State submission: The Oregon submission references ORS 468.035(a-e, m) *Functions of the Department* which provides authority to conduct and supervise inquiries and programs to assess and communicate air conditions and to obtain necessary resources (assistance, materials, supplies, etc.) to meet these responsibilities and ORS 468A.070 *Measurement and Testing of Contamination Sources; Rules* which provides the authority to establish a measurement and testing program. In addition, ORS 468A.025 *Air Purity Standards; Air Quality Standards; Treatment and Control of Emissions; Rules* requires controls necessary to achieve ambient air quality standards and prevent significant impairment of visibility. The submission also references Division 212 *Stationary Source Testing and Monitoring* regulations which sets requirements, methods, and criteria for emission monitoring and reporting.

EPA analysis: A comprehensive air quality monitoring plan, intended to meet federal requirements, was originally submitted by Oregon on December 27, 1979 (40 CFR 52.1970) and approved by the EPA on March 4, 1981 (46 FR 15136). The plan includes statutory and regulatory authority to establish and operate an air quality monitoring network, including ozone

monitoring. Oregon's SIP-approved regulations at Division 212 govern stationary source testing and monitoring in accordance with Federal reference methods. Every five years, Oregon assesses the adequacy of the State monitoring network and submits that assessment to the EPA for review. In practice, Oregon operates a comprehensive monitoring network, including ozone monitoring, compiles and analyzes collected data, and submits the data to the EPA's Air Quality System on a quarterly basis. Therefore, we are proposing to approve the Oregon SIP as meeting the requirements of CAA section 110(a)(2)(B) for the 2015 ozone NAAQS.

110(a)(2)(C): Program for enforcement of control measures

CAA section 110(a)(2)(C) requires each State to include a program providing for enforcement of all SIP measures and the regulation of construction of new or modified stationary sources, including a program to meet PSD and nonattainment NSR requirements.

State submission: The Oregon submission refers to ORS 468.090 – 140 *Enforcement* which provides the ODEQ with authority to investigate complaints, investigate and inspect sources for compliance, access records, commence enforcement procedures, and impose civil penalties. In addition, ORS 468.035 *Functions of the Department*, paragraphs (j) and (k), provide the ODEQ with authority to enforce Oregon air pollution laws and compel compliance with any rule, standard, order, permit or condition. The submission also cites:

- ORS 468.020 Rules and Standards
- ORS 468.065 Issuance of Permits; Consent; Fees; Use
- ORS 468.070 Denial, Modification, Suspension or Revocation of Permits
- ORS 468.920 – 963 Environmental Crimes
- ORS 468.996 – 997 Civil Penalties
- ORS 468A.025 Air Purity Standards; Air Quality Standards; Treatment and Control



of Emissions; Rules

- ORS 468A.035 General Comprehensive Plan
- ORS 468A.040 Permits; Rules
- ORS 468A.045 Activities Prohibited without Permit; Limit on Activities with Permit
- ORS 468A.050 Classification of Air Contamination Sources; Registration and Reporting; Registration and Reporting of Sources; Rules; Fees
- ORS 468A.055 Notice Prior to Construction of New Sources; Order Authorizing or Prohibiting Construction; Effect of No Order; Appeal
- ORS 468A.070 Measurement and Testing of Contamination Sources; Rules
- ORS 468A.310 Federal Operating Permit Program Approval; Rules; Content of Plan
- ORS 468A.990 Penalties for Air Pollution Offenses
- OAR 340-012 Enforcement Procedure and Civil Penalties
- OAR 340-202 Ambient Air Quality Standards and PSD Increments
- OAR 340-210 Stationary Source Notification Requirements
- OAR 340-214 Stationary Source Reporting Requirements
- OAR 340-216 Air Contaminant Discharge Permits (ADCP)
- OAR 340-224 New Source Review

EPA analysis: The EPA is proposing to find that Oregon code provisions provide the ODEQ with authority applicable to the 2015 ozone standard to enforce the air quality laws, regulations, permits, and orders promulgated pursuant to ORS Chapters 468 and 468A. The ODEQ staffs and maintains an enforcement program to ensure compliance with SIP requirements. The ODEQ Director, at the direction of the Governor, may enter a cease and desist

order for polluting activities that present an imminent and substantial danger to public health (ORS 468.115). Enforcement cases may be referred to the State Attorney General's office for civil or criminal enforcement.

To generally meet the requirements of CAA section 110(a)(2)(C) for regulation of construction of new or modified stationary sources, each State is required to have PSD, nonattainment NSR, and minor NSR permitting programs adequate to implement the 2015 ozone NAAQS. As explained above, we are not in this action evaluating nonattainment-related provisions, including the nonattainment NSR program required by part D, title I of the CAA.

Oregon's Federally-enforceable State operating permit program, at Division 216 *Air Contaminant Discharge Permits*, is also the administrative permit mechanism used to implement the SIP-approved NSR program. We most recently approved revisions to the NSR program (Divisions 200, 202, 209, 212, 216, 222, 224, 225, and 268) as meeting Federal requirements at 40 CFR 51.160 through 164 (minor NSR) and 40 CFR 51.166 (PSD) on October 11, 2017 (82 FR 47122). The Oregon minor NSR and PSD rules meet current requirements for all regulated NSR pollutants. Therefore, we are proposing to approve the Oregon SIP as meeting the requirements of CAA section 110(a)(2)(C) for the 2015 ozone NAAQS.

#### 110(a)(2)(D): Interstate transport

CAA section 110(a)(2)(D)(i) addresses four separate elements, or "prongs." CAA section 110(a)(2)(D)(i)(I) requires SIPs to contain adequate provisions prohibiting emissions which will contribute significantly to nonattainment of the NAAQS in any other State (prong 1), and adequate provisions prohibiting emissions which will interfere with maintenance of the NAAQS by any other State (prong 2). CAA section 110(a)(2)(D)(i)(II) requires SIPs to contain adequate provisions prohibiting emissions which will interfere with any other State's required measures to

prevent significant deterioration (PSD) of its air quality (prong 3), and adequate provisions prohibiting emissions which will interfere with any other State's required measures to protect visibility (prong 4).

CAA section 110(a)(2)(D)(ii) states SIPs must include provisions ensuring compliance with the applicable requirements of CAA sections 126 and 115 (relating to interstate and international pollution abatement). CAA section 126 requires notification to neighboring States of potential impacts from a new or modified major stationary source and specifies how a State may petition the EPA when a major source or group of stationary sources in a State is thought to contribute to certain pollution problems in another State. CAA section 115 governs the process for addressing air pollutants emitted in the United States that cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare in a foreign country.

State submission: The Oregon submission addresses all interstate transport requirements of the CAA. This proposed action, however, addresses only the CAA sections 110(a)(2)(D)(i)(II), and 110(a)(2)(D)(ii). We intend to address the remainder of the interstate transport requirements in a separate, future action.

To meet the provisions of the CAA sections 110(a)(2)(D)(i)(II), and 110(a)(2)(D)(ii), the Oregon submission references the State's SIP-approved NSR program, the State's SIP-approved regional haze plan and the recently SIP-approved Oregon Regional Haze Progress Report (May 17, 2018, 83 FR 22853). The Oregon submission also references Division 209 *Public Participation*, approved as part of the Oregon NSR program, and asserts that Oregon regulations are consistent with Federal requirements in Appendix N of 40 CFR part 50 pertaining to the notification of interstate pollution abatement.

EPA analysis: The EPA believes that the PSD sub-element of CAA section

110(a)(2)(D)(i)(II) (prong 3) is satisfied where major new and modified stationary sources in attainment and unclassifiable areas are subject to a SIP-approved PSD program. The EPA most recently approved revisions to Oregon's NSR program as meeting Federal PSD requirements on October 11, 2017 (82 FR 47122). Therefore, we are proposing to approve the Oregon SIP as meeting CAA section 110(a)(2)(D)(i)(II) prong 3 with respect to PSD for the 2015 ozone NAAQS.

The EPA believes, as noted in the 2013 Guidance, where a State's regional haze plan has been approved as meeting all current obligations, a State may rely upon those provisions in support of its demonstration that it satisfies CAA section 110(a)(2)(D)(i)(II) as it relates to visibility (prong 4). On July 5, 2011, the EPA approved portions of the Oregon regional haze plan, including the requirements for best available retrofit technology (76 FR 38997). We approved the remaining elements of the Oregon regional haze plan on August 22, 2012 (77 FR 50611). In addition, on May 17, 2018, the EPA approved the Oregon Regional Haze Progress Report and determined the existing regional haze SIP adequate to meet the State's visibility goals and requires no substantive revisions at this time (83 FR 22853). Because we approved the Oregon plan as meeting regional haze requirements, we are proposing to approve the Oregon SIP as meeting CAA section 110(a)(2)(D)(i)(II) prong 4 visibility requirements with respect to the 2015 ozone NAAQS.

The Division 209 public notice provisions in Oregon's SIP-approved NSR program require that for major NSR permit actions, Oregon must provide notice to neighboring States, among other officials and agencies. This notice requirement is consistent with CAA section 126(a). In addition, Oregon has no pending obligations under section 115 or 126(b) of the CAA. Therefore, we are proposing to approve the Oregon SIP as meeting the requirements of CAA

section 110(a)(2)(D)(ii) for the 2015 ozone NAAQS.

110(a)(2)(E): Adequate resources

CAA section 110(a)(2)(E) requires each State to provide (i) necessary assurances that the State will have adequate personnel, funding, and authority under State law to carry out the SIP (and is not prohibited by any provision of Federal or State law from carrying out the SIP or portion thereof), (ii) requirements that the State comply with the State board provisions under CAA section 128 and (iii) necessary assurances that, where the State has relied on a local or regional government, agency, or instrumentality for the implementation of any SIP provision, the State has responsibility for ensuring adequate implementation of such SIP provision.

State submission: With respect to sub-element (E)(i), the Oregon submission cites ORS 468.035 *Functions of Department* which provides the ODEQ authority to employ personnel, purchase supplies, enter into contracts, and to receive, appropriate, and expend Federal and other funds for purposes of air pollution research and control. In addition, ORS 468.045 *Functions of Director; Delegation* provides the ODEQ Director with authority to hire, assign, reassign, and coordinate personnel of the department and to administer and enforce the laws of the State concerning environmental quality. The ODEQ has an intergovernmental agreement to delegate its authority to implement the requirements of the CAA in Lane County, Oregon to the Lane Regional Air Protection Agency (LRAPA). In addition, the submission cites the CAA section 105 grants received from the EPA and matched through the Oregon General Fund.

Turning to sub-element (E)(ii), the submission cites OAR 340-200-0100 *Purpose*, OAR 340-200-0110 *Public Interest Representation*, and OAR 340-200-0120 *Disclosure of Potential Conflicts of Interest*. The submission states that the EPA approved the listed regulatory provisions as meeting the requirements of CAA section 128 on January 22, 2003 (68 FR 2891).

In addition, the submission cites LRAPA Title 12, Section 025 (recodified to LRAPA Title 13, Section 025 *Conflict of Interest*), approved by the EPA on March 1, 1989 (54 FR 8538), and notes it meets CAA section 128.

With respect to sub-element (E)(iii), the submission cites ORS 468.020 *Rules and Standards* which requires a public hearing on any proposed rule or standard prior to adoption. ORS 468.035(c) *Functions of Department* provides the ODEQ authority to advise, consult, and cooperate with other States, State and Federal agencies, or political subdivisions on all air quality control matters. ORS 468A.010 *Policy* calls for a coordinated Statewide program of air quality control with responsibility allocated between the State and the units of local government. ORS 468A.100-180 *Regional Air Quality Control Authorities* describes the establishment, role and function of regional air quality control authorities. State regulations in Division 200 specify LRAPA has authority in Lane County, defines the term *Regional Agency* and describes inclusion of LRAPA's actions into the SIP. Division 204 includes designation of control areas within Lane County. Division 216 *Air Contaminant Discharge Permits* includes permitting authority for LRAPA.

EPA analysis: We are proposing to find that the above-referenced provisions provide Oregon with adequate authority to carry out SIP obligations with respect to the 2015 ozone NAAQS as required by CAA section 110(a)(2)(E)(i). We are also proposing to approve the Oregon SIP as meeting CAA section 110(a)(2)(E)(ii) because we previously approved the SIP for purposes of CAA section 128. On January 22, 2003, we approved OAR 340-200-0100 through OAR 340-200-0120 as meeting CAA section 128 (68 FR 2891). In addition, we approved LRAPA Title 12, Section 025 (recodified at LRAPA Title 13, section 025) as meeting CAA section 128 on March 1, 1989 (54 FR 8538).

We are proposing to find that Oregon has provided necessary assurances that, where the State has relied on a local or regional government, agency, or instrumentality for the implementation of any SIP provision, the State has responsibility for ensuring adequate implementation of the SIP as required by CAA section 110(a)(2)(E)(iii). Therefore, we are proposing to approve the Oregon SIP as meeting the requirements of CAA sections 110(a)(2)(E) for the 2015 ozone NAAQS.

110(a)(2)(F): Stationary source monitoring system

CAA section 110(a)(2)(F) requires (i) the installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources to monitor emissions from such sources, (ii) periodic reports on the nature and amounts of emissions and emissions-related data from such sources, and (iii) correlation of such reports by the State agency with any emission limitations or standards established pursuant to the CAA, which reports shall be available at reasonable times for public inspection.

State submission: The Oregon submission refers to the following statutory and regulatory provisions for source emissions monitoring, reporting, and correlation with emission limits or standards:

- ORS 468.020 Rules and Standards
- ORS 468.035 Functions of Department paragraphs (b) and (d)
- ORS 468A.025(4) Air Purity Standards; Air Quality Standards; Treatment and Control of Emissions; Rules
- ORS 468A.070 Measurement and Testing of Contamination Sources; Rules
- ORS 468A.310 Federal operating permit program approval; rules; content of plan
- ORS 468A.365 Certification of Motor Vehicle Pollution Control Systems and Inspection

of Motor Vehicles; Rules

- OAR 340-212 Stationary Source Testing and Monitoring
- OAR 340-214 Stationary Source Reporting Requirements
- OAR 340-222 Stationary Source Plant Site Emission Limits
- OAR 340-224-0070 New Source Review, Prevention of Significant Deterioration Requirements for Sources in Attainment or Unclassified Areas
- OAR 340-225 Air Quality Analysis Requirements
- OAR 340-232 Emission Standards for VOC Point Sources
- OAR 340-236 Emission Standards for Specific Industries: Emissions Monitoring and Reporting
- OAR 340-250 General Conformity
- OAR 340-258-0010 through 0310 Motor Vehicle Fuel Specifications, record keeping and reporting

EPA analysis: The Oregon statutory provisions listed above provide authority to establish a program for measurement and testing of sources, including requirements for sampling and testing with respect to the 2015 ozone NAAQS. The Oregon regulations cited above require facilities to monitor and report emissions, including requirements for monitoring methods and design, and monitoring and quality improvement plans. Oregon's stationary source reporting requirements include maintaining written records to demonstrate compliance with emission rules, limitations, or control measures, and requirements for reporting and recordkeeping. Information is made available to the public through public processes outlined at OAR 340-209 *Public Participation*.



Oregon submits emissions data to the EPA for purposes of the National Emissions Inventory (NEI). The NEI is the EPA's central repository for air emissions data. Oregon submits a comprehensive emission inventory every three years and reports emissions for certain larger sources annually through the EPA's online Emissions Inventory System. Oregon reports emissions data for the six criteria pollutants and voluntarily reports emissions of hazardous air pollutants. The EPA compiles the emissions data, supplementing it where necessary, and releases it to the public through the website <https://www.epa.gov/air-emissions-inventories>.

Based on the analysis above, we are proposing to approve the Oregon SIP as meeting the requirements of CAA section 110(a)(2)(F) for the 2015 ozone NAAQS.

110(a)(2)(G): Emergency episodes

CAA section 110(a)(2)(G) requires States to provide for authority to address activities causing imminent and substantial endangerment to public health, including adequate contingency plans to implement the emergency episode provisions in their SIPs.

State submission: The Oregon submission cites ORS 468-115 *Enforcement in Cases of Emergency* which authorizes the ODEQ Director, at the direction of the Governor, to enter a cease and desist order for polluting activities that present an imminent and substantial danger to public health. In addition, OAR 340-206 *Air Pollution Emergencies* authorizes the ODEQ Director to declare an air pollution alert or warning, or to issue an advisory to notify the public. OAR 340-214 *Stationary Source Reporting Requirements* governs reporting of emergencies and excess emissions and reporting requirements.

EPA analysis: Section 303 of the CAA provides authority to the EPA Administrator to restrain any source from causing or contribution to emissions which present an "imminent and substantial endangerment to public health or welfare, or the environment." We find that ORS

468-115 *Enforcement in Cases of Emergency* provides emergency order authority comparable to CAA section 303.

We recently approved revisions to the Oregon air pollution emergency rules at OAR 340-206 *Air Pollution Emergencies* on October 11, 2017 (82 FR 47122). Oregon's rules are consistent with Federal emergency episode requirements for ozone (prevention of air pollution emergency episodes, 40 CFR part 51 subpart H; sections 51.150 through 51.153). Accordingly, we are proposing to approve the Oregon SIP as meeting the requirements of CAA section 110(a)(2)(G) for the 2015 ozone NAAQS.

110(a)(2)(H): Future SIP Revisions

CAA section 110(a)(2)(H) requires that SIPs provide for revision of a State plan (i) from time to time as may be necessary to take account of revisions of a national primary or secondary ambient air quality standard or the availability of improved or more expeditious methods of attaining the standard, and (ii), except as provided in paragraph 110(a)(3)(C), whenever the Administrator finds that the SIP is substantially inadequate to attain the NAAQS which it implements or to otherwise comply with any additional requirements under the CAA.

State submission: The Oregon submission refers to ORS 468.020 *Rules and Standards* which requires public notice on any proposed rule or standard prior to adoption, and ORS 468A.035 "General Comprehensive Plan" which requires the ODEQ to develop a general comprehensive plan for the control or abatement of air pollution. The submission also refers to OAR 340-200-0040 *State of Oregon Clean Air Act Implementation Plan* which provides for revisions to the Oregon SIP and submission of revisions to the EPA, including standards submitted by a regional authority and adopted verbatim into State rules.

EPA analysis: As cited above, the Oregon SIP provides for revisions, and in practice,

Oregon regularly submits SIP revisions to the EPA. On October 11, 2017, the EPA approved many revisions to the Oregon SIP (82 FR 47122). Other recent EPA actions on revisions to the Oregon SIP include but are not limited to: May 24, 2018 (83 FR 24034); May 17, 2018 (83 FR 22853); February 8, 2018 (83 FR 5537); October 21, 2016 (81 FR 72714); July 20, 2016 (81 FR 47029); June 6, 2016 (81 FR 36176); May 16, 2018 (81 FR 30181). Accordingly, we are proposing to approve the Oregon SIP as meeting the requirements of CAA section 110(a)(2)(H) for the 2015 ozone NAAQS.

110(a)(2)(I): Nonattainment area plan revision under part D

There are two elements identified in CAA section 110(a)(2) not governed by the three-year submission deadline of CAA section 110(a)(1) because SIPs incorporating necessary local nonattainment area controls are due on nonattainment area plan schedules pursuant to section 172 and the various pollutant-specific subparts 2 through 5 of part D. These are submissions required by: (i) CAA section 110(a)(2)(C) to the extent that subsection refers to a permit program as required in part D, title I of the CAA, and (ii) section 110(a)(2)(I) which pertain to the nonattainment planning requirements of part D, title I of the CAA. As a result, this action does not address CAA section 110(a)(2)(C) with respect to nonattainment NSR or CAA section 110(a)(2)(I).

110(a)(2)(J): Consultation with government officials

CAA section 110(a)(2)(J) requires States to provide a process for consultation with local governments and Federal Land Managers carrying out NAAQS implementation requirements pursuant to CAA section 121. CAA section 110(a)(2)(J) further requires States to notify the public if NAAQS are exceeded in an area and to enhance public awareness of measures that can be taken to prevent exceedances. Lastly, CAA section 110(a)(2)(J) requires States to meet

applicable requirements of part C, title I of the CAA related to prevention of significant deterioration and visibility protection.

State submission: The Oregon submission references specific laws and regulations relating to consultation, public notification, and PSD:

- ORS 468.020 Rules and Standards
- ORS 468.025 Air Purity Standards; Air Quality Standards; Treatment and Control of Emissions; Rules
- ORS 468.035 Functions of Department paragraphs (a), (c), (f) and (g)
- ORS 468A.010 Policy paragraphs (1)(b) and (c) OAR 340-202 Ambient Air Quality Standards and PSD Increments
- OAR 340-202 Ambient Air Quality Standards and PSD Increments
- OAR 340-204 Designation of Air Quality Areas
- OAR 340-206 Air Pollution Emergencies
- OAR 340-209 Public Participation
- OAR 340-216 Air Contaminant Discharge Permits (ACDP)
- OAR 340-223 Regional Haze Rules
- OAR 340-224 New Source Review
- OAR 340-225 Air Quality Analysis Requirements
- OAR 340-252 Transportation Conformity

EPA analysis: The Oregon SIP includes specific provisions for consulting with local governments and Federal Land Managers as specified in CAA section 121, including the Oregon rules for PSD permitting. The EPA most recently approved revisions to the Oregon NSR

program, which provides opportunity and procedures for public comment and notice to appropriate Federal, State and local agencies, on October 11, 2017 (82 FR 47122). In addition, we approved the Oregon rules that define transportation conformity consultation on October 4, 2012 (77 FR 60627) and regional haze interagency planning on July 5, 2011 (76 FR 38997).

In practice, the ODEQ routinely coordinates with local governments, States, Federal Land Managers and other stakeholders on air quality issues including transportation conformity and regional haze, and provides notice to appropriate agencies related to permitting actions. Oregon participates in regional planning processes including the Western Regional Air Partnership, which is a voluntary partnership of States, Tribes, Federal Land Managers, local air agencies and the EPA, whose purpose is to understand current and evolving regional air quality issues in the West. Based on the provisions above, we are proposing to find that the Oregon SIP meets the requirements of CAA section 110(a)(2)(J) for consultation with government officials for the 2015 ozone NAAQS.

Section 110(a)(2)(J) also requires States to notify the public if ambient air quality standards are exceeded in an area. States must advise the public of the health hazards associated with air pollution and what can be done to prevent exceedances. The EPA calculates an air quality index for five major air pollutants regulated by the CAA: ground-level ozone, particulate matter, carbon monoxide, sulfur dioxide, and nitrogen dioxide. This air quality index (AQI) provides daily information to the public on air quality. Oregon actively participates and submits information to the EPA's AIRNOW and Enviroflash Air Quality Alert programs which provide information to the public on local air quality. Oregon also provides the AQI to the public at <http://www.deq.state.or.us/aqi/>. Therefore, we are proposing to find that the Oregon SIP meets the requirements of CAA section 110(a)(2)(J) for public notification for the 2015 ozone

NAAQS.

Turning to the requirement in CAA section 110(a)(2)(J) that the SIP meet the applicable requirements of part C, title I of the CAA, we have evaluated this requirement in the context of CAA section 110(a)(2)(C) and permitting. The EPA most recently approved revisions to Oregon's PSD program on October 11, 2017 (82 FR 47122), updating the program for current Federal requirements. Therefore, we are proposing to approve the Oregon SIP as meeting the requirements of CAA 110(a)(2)(J) with respect to PSD for the 2015 NAAQS.

With respect to visibility protection under element (J), the EPA recognizes that States are subject to visibility and regional haze program requirements under part C of the CAA. In the event of the establishment of a new NAAQS, however, the visibility and regional haze program requirements under part C do not change. Thus, we find that there is no new applicable requirement relating to visibility triggered under CAA section 110(a)(2)(J) when a new NAAQS becomes effective.

Based on the above analysis, we are proposing to approve the Oregon SIP as meeting the requirements of CAA section 110(a)(2)(J) for the 2015 ozone NAAQS.

110(a)(2)(K): Air quality and modeling/data

CAA section 110(a)(2)(K) requires that SIPs provide for (i) the performance of air quality modeling as the Administrator may prescribe for the purpose of predicting the effect on ambient air quality of any emissions of any air pollutant for which the Administrator has established a NAAQS, and (ii) the submission, upon request, of data related to such air quality modeling to the Administrator.

State submission: The Oregon submission refers to ORS 468-020 *Rules and Standards* which requires public hearing on any proposed rule or standard prior to adoption, and ORS

468.035 *Functions of Department* which provides the ODEQ authority to conduct studies and investigations to determine air quality. The submission also references OAR 340-225 *Air Quality Analysis Requirements* which includes modeling requirements for analysis and demonstration of compliance with standards and increments in specified areas.

In addition, on December 11, 2018, Oregon submitted OAR 340-200-0035 *Reference Materials* as a related rule amendment associated with ODEQ's Cleaner Air Oregon program and rule submission.<sup>4</sup> Specifically, OAR 340-200-0035(1) was revised to incorporate the Code of Federal Regulations, July 1, 2018 edition, as the updated reference to be used throughout their rule.

EPA analysis: The EPA previously approved OAR 340-225 *Air Quality Analysis Requirements* on October 11, 2017 (82 FR 47122). These rules specify that modeled estimates of ambient concentrations be based on 40 CFR part 51, appendix W (Appendix W) (Guidelines on Air Quality Models). Oregon's SIP requires modeled estimates of ambient concentrations be based on the current version of Appendix W, consistent with the EPA's implementing regulations in 40 CFR part 51.

On December 11, 2018, the ODEQ submitted revised OAR 340-200-0035 *Reference Materials* as part of its Cleaner Air Oregon SIP submission. Specifically, the submission of OAR 340-200-0035(1) incorporates Appendix W, as of July 1, 2018 and therefore captures the EPA's recent changes to the Federal Guidelines on Air Quality Models codified in 40 CFR part 51, appendix W (January 17, 2017, 82 FR 5182). Any change or substitution from models specified in Appendix W is subject to notice and opportunity for public comment and must receive prior

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<sup>4</sup> The Cleaner Air Oregon program and rules, and related rules, add public health-based protection from emissions of industrial toxic air contaminants to the state's existing air permitting regulatory framework. The goal of the Cleaner Air Oregon program is to evaluate potential health risks to people near commercial and industrial facilities that emit regulated toxic air contaminants, communicate those results to affected communities, and ultimately reduce those risks below health-based standards.

written approval from the ODEQ and the EPA.

Based on the above information, we are proposing to approve the Oregon SIP as meeting the requirements of CAA section 110(a)(2)(K) for the 2015 ozone NAAQS. We are also proposing to approve the revised OAR 340-200-0035(1) *Reference Materials*.

110(a)(2)(L): Permitting fees

CAA section 110(a)(2)(L) directs SIPs to require each major stationary source to pay permitting fees to cover the cost of reviewing, approving, implementing and enforcing a permit.

State submission: The Oregon submission refers to ORS 468.065 *Issuance of Permits: Content; Fees; Use* which provides the EQC authority to establish a schedule of fees for permits based on the costs of filing and investigating applications, issuing or denying permits, carrying out title V requirements and determining compliance. ORS 468A.040 *Permits; Rules* provides that the EQC may require permits for air contamination sources, type of air contaminant, or specific areas of the State. The submission also references OAR 340-216 *Air Contaminant Discharge Permits* which requires payment of permit fees based on a specified table of sources and fee schedule.

EPA analysis: On September 28, 1995, the EPA fully-approved Oregon's title V operating permit program (60 FR 50106). While Oregon's title V program is not formally approved into the SIP, it is a mechanism the State can use to ensure the ODEQ has sufficient resources to support the air program, consistent with the requirements of the SIP. Before the EPA can grant full approval, a State must demonstrate the ability to collect adequate fees. The Oregon title V program included a demonstration that fees would be adequate, and that the State would collect fees from title V sources above the presumptive minimum in accordance with 40 CFR 70.9(b)(2)(i). In addition, we note that Oregon SIP-approved regulations require fees for



purposes of major and minor NSR permitting, as specified in OAR 340-216-0090 *Sources Subject to ADCP and Fees*, OAR 340-216-8010 *Table 1 – Activities and Sources*, and OAR 340-216-8020 *Table 2 – Air Contaminant Discharge Permits (fee schedule)*. Therefore, we are proposing to conclude that Oregon has satisfied the requirements of CAA section 110(a)(2)(L) for the ozone NAAQS.

110(a)(2)(M): Consultation/participation by affected local entities

CAA section 110(a)(2)(M) requires States to provide for consultation and participation in SIP development by local political subdivisions affected by the SIP.

State submission: The Oregon submission refers to the following laws and regulations:

- ORS 468.020 Rules and Standards
- ORS 468.035 Functions of Department paragraphs (a), (c), (f), and (g)
- ORS 468A.010 Policy paragraphs (1)(b) and (c)
- ORS 468A.025 Air Purity Standards; Air Quality Standards; Treatment and Control of Emissions; Rules
- ORS 468A.035 General Comprehensive Plan
- ORS 468A.040 Permits; Rules
- ORS 468A.055 Notice Prior to Construction of New Sources; Order Authorizing or Prohibiting Construction; Effect of No Order; Appeal
- ORS 468A.070 Measurement and Testing of Contamination Sources; Rules
- ORS 468A.100-180 Regional Air Quality Control Authorities
- OAR 340-200 General Air Pollution Procedures and Definitions
- OAR 340-204 Designation of Air Quality Areas

- OAR 340-216 Air Contaminant Discharge Permits

EPA analysis: The regulations cited by Oregon were previously approved on December 27, 2011 (76 FR 80747) and provide for consultation and participation in SIP development by local political subdivisions affected by the SIP. We are proposing to approve the Oregon SIP as meeting the requirements of CAA section 110(a)(2)(M) for the 2015 ozone NAAQS.

### **III. Proposed Action**

The EPA is proposing to find the Oregon SIP meets the following CAA section 110(a)(2) infrastructure elements for the 2015 ozone NAAQS: (A), (B), (C), (D)(i)(II), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M). This proposed action addresses only the interstate transport requirements of CAA sections 110(a)(2)(D)(i)(II), and 110(a)(2)(D)(ii). We intend to address the remainder of the interstate transport requirements in a separate, future action. In addition, we are also proposing to approve into the Oregon SIP, and incorporate by reference at 40 CFR part 52, subpart MM, a revision to Oregon's Administrative Rule 340-200-0035(1) *Reference Materials* submitted as part of the Cleaner Air Oregon SIP on December 11, 2018.

### **IV. Incorporation by Reference**

In this document, we are proposing to include in a final rule, regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, we are proposing to incorporate by reference the provisions described above in Section V. Proposed Action. The EPA has made, and will continue to make, these documents generally available electronically through <https://www.regulations.gov> and in hard copy at the appropriate EPA office (see the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

### **V. Statutory and Executive Orders Review**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve State choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this proposed action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because it does not involve technical standards; and
- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: February 25, 2019.

Chris Hladick,  
Regional Administrator,  
Region 10.

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